

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RICHARD AND JANE ERICKSON,)	DOCKET NO.: PT-1997-156
)	
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 19th day of August, 1998 in Kalispell, Montana in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, Richard and Jane Erickson, presented testimony in support of their appeal. The Department of Revenue (DOR), represented by appraisers Brandon J. Liebrecht, Sr. and Betty MacDavid, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of

this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as:

Tract 6AB in SW1/4,NW1/4,SW1/4 Section 34,
Township 27 North, Range 22 West, County of
Flathead, State of Montana, Land and
Improvements Thereon. (DOR ID# 232635)

3. For the 1997 tax year, the DOR valued the land at \$39,000 and improvements at \$124,050.

4. The taxpayer filed an AB-26 Property Adjustment Form dated September 19, 1997 with the DOR requesting ~~A~~a formal review meeting to provide additional information@ and stating, ~~A~~professional appraisal done July 23, 1997 estimated the value to be \$135,000. Copy of the appraisal is attached.@

5. The notice of the result of the AB-26 review was sent to the taxpayer on October 17, 1997:

~~A~~Your improvements are valued at fair market value based on replacement costs reflecting the house being incomplete. No adjustment was made.@

6. On November 12, 1997, the taxpayers appealed to the Flathead County Tax Appeal Board, stating:

PROFESSIONAL APPRAISAL BY GLACIER BANK (REP)
DONE JULY 23, 1997 ESTIMATED THE VALUE TO BE
\$135,000. HOUSE IS LESS THAN 80% COMPLETE.

7. In its March 25, 1998 decision, the county board

disapproved the appeal stating:

It is the decision of the board that this appeal be denied. The Dept. of Revenue is ordered to make no change in value.

8. The taxpayers appealed the county board decision to this Board on May 4, 1998, stating:

I FEEL THE COUNTY APPEAL BOARD WAS UNFAIR AND DID NOT CONSIDER ALL THE FACTS THAT I PRESENTED IN MY APPEAL--THEIR APPRAISAL WAS WAY OUT OF LINE WITH A PRIVATE APPRAISER.

TAXPAYERS- CONTENTIONS

Mr. Erickson testified that he was aware the DOR valued the subject improvements based on replacement cost. He stated that, with the exception of three of the six walls of the house, he did all the construction. He has direct knowledge of the costs incurred and, therefore, knowledge of the costs of replacement.

In June of 1997, Mr. Erickson testified he applied for a loan to complete construction and, as a result, the lending institution made an appraisal of the house. He submitted a copy of that appraisal (TP Ex 1) that estimated the market value of the subject property to be \$135,000 as of July 23, 1997. He stated he disagreed with the \$50,000 value this appraisal attributed to the land and deemed it to be **A**grossly inflated,[@] adding that he purchased the ten acres in 1968 for

\$1,750.

For comparative purposes, he cited a sale of 15 or 25 acres within one-half mile of his property that recently sold for \$45,000. He also cited a \$118,000 sale this past fall of an 1,800 square foot log house on ten acres adjacent to his property. Mr. Erickson added that this house, while not constructed as well as his, had one more bedroom, a large garage, a barn, and a chicken coop. He added that this property was completely fenced, while his property is not fenced.

Mr. Erickson testified that he began construction of his house in 1986. At that time he laid the foundation, put the logs in the front, completed one window, plumbing, floor, well, pump, and septic tank, and began one bathroom downstairs, studded some of the walls, covered first floor beams, laid a temporary roof and installed a temporary electrical system with an outside circuit breaker. During summers from 1987 through 1993, some windows were added and more walls were framed.

In 1993 Mr. Erickson testified he retired and continued construction. He framed the concrete walls, installed dry wall downstairs, installed an electric breaker and a permanent line, and about 80 logs were cut for the house.

In 1994, he continued construction upstairs with log walls, removal of part of the temporary roof, and began the permanent

roof and part of the ceiling. More windows were installed, upstairs walls were studded, and some electric work was completed. In 1995 the kitchen floor and cabinets were started, the kitchen electric work was finished, a permanent roof was installed, and the kitchen ceiling varnished. The stair walls were dry walled. Living room, kitchen and bedroom windows were installed. In 1996 the living room ceiling was varnished, kitchen was finished, and trees for the decks were cut. The work that was completed by the end of 1997 included the living room floor, bedroom floor, the deck rails, the living room windows, trimming, a French door, and the upstairs bathroom was started (a toilet had been installed earlier).

Mr. Erickson testified that the major portion of the work left to do includes a 4' x 8' fireplace. He estimated the cost would be \$5,000 if he were to contract the work, but it will be less as he is doing the work himself. The walls in the laundry room are incomplete, an entry way floor, downstairs bathroom, and bedrooms are incomplete, and a store room has yet to be constructed. Some plumbing downstairs has yet to be boxed in and a downstairs wall has to be covered with rock. The downstairs floor, being covered with stone, is about one-sixth completed and some doors have yet to be made and installed.

Mr. Erickson testified the quality of the materials used in construction, particularly the wood used, are probably

inferior in quality and necessitated reconditioning, resanding, etc., plus added considerably more time to construction than if he had been using better grade materials. He stated he does not have his exact cost figures available but estimated current costs to be about \$70,000.

Mr. Erickson stated there are a lot of water stains on the wood interior due to the length of time the temporary roof was necessary.

Mr. Erickson questioned the DOR completion factor and countered that, in his opinion, it should be considered to be between 60% and 65% as of January 1, 1996 and between 60% and 70% complete in 1997. He also stated he considered it grossly unfair to assign a value in excess of his actual costs, as he has been able to do the majority of construction himself rather than incur the expenses of outside contractors.

DEPARTMENT OF REVENUE'S CONTENTIONS

Mr. Liebrecht testified that the DOR's goal in appraising the subject property was to establish a fair market value. He explained the improvement was valued using the cost approach to value which is replacement cost new less depreciation; in other words, it is what the Atypical cost would be to replace (the) house had...a contractor come in and built (it).@

Mr. Liebrecht stated an on-site inspection was

conducted in 1995 by a DOR appraiser. At that time, the taxpayers were living in the downstairs portion of the house. The house was enclosed, had a roof, running water, and electricity. The DOR determined that the structure was 33% complete.

Since that inspection Mr. Liebrecht stated he had visited the property on two occasions. A site value of \$39,000 was attributed to the subject 10 acre parcel. A Computer Assisted Land Pricing (CALP) model (DOR Ex B) was presented listing the vacant land sales used to value the subject property.

Mr. Liebrecht testified the improvement was valued using the cost approach, with depreciation of 15% and a completion percentage of 81%.(DOR Ex A) To the replacement cost new less depreciation calculation, an economic condition factor (ECF) of 131% was applied.

Mr. Liebrecht stated the 15% depreciation was based on the age of the structure combined with a Condition, Desirability, Utility (CDU) rating of **Afair@** which accommodated the facts that the property is located at the end of a private lane making winter access difficult and additional depreciation is due to the deterioration that has resulted from leaking that occurred due to the temporary roof. Mr. Liebrecht stated the CDU was calculated using a weighted formula, the most weight

attributed to ~~A~~desirability@ that takes into account locational factors.

The completion factor was determined using a point system presented on the Percent Complete Chart submitted. (DOR Ex A) Mr. Liebrecht testified the 11% on the chart representing ~~A~~Excavation@ included leveling of the site, the driveway, digging the hole for the foundation, building of the forms, pouring the concrete, and all the labor involved.

Items deemed to be incomplete as of January 1, 1997 were the interior carpentry, interior finish, floor covering, cabinets and counter tops, plumbing finish, and electric finish. Upon closer review of the points assigned to each of the items on the Percent Complete Chart, Mr. Liebrecht agreed that 74% rather than 81% might more accurately represent the percent complete of the subject property.

Mr. Liebrecht defined the ECF as:

~~A~~...the final step in the cost approach is ensuring that estimated values are consistent with the market.

This is particularly improtant (sic) because the cost approach separately estimates land and building values and uses replacement costs, which reflects only the supply side of the market.@ ~~A~~Market adjustment factors are often required to adjust values obtained from the cost approach to market.@

Property Appraisal and Assessment Administrations, IAAO pg 360 & 311 (DOR Ex A)

DISCUSSION

The DOR made a motion to dismiss the appeal based on untimeliness. Mr. Erickson testified that, for medical

reasons, he and Mrs. Erickson were not in the area from the time the county decision was made on March 25, 1998 until May 1, 1998 when the decision was received. Based on the taxpayer's testimony, the DOR's motion was denied.

In the calculation of a value for the subject property, the DOR determined the replacement cost of the improvements, and then judged the improvements were 85% good (15% depreciation) and 81% complete. To that result, an economic condition factor (ECF) of 131% was applied.

The Board concurs with the adjustment agreed to by the DOR that the completion factor should be lowered from 81% to 74%.

The ECF is a market adjustment factor. The International Association of Assessing Officers (IAAO) states:

Market adjustment factors are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area based on sales ratio studies or other market analyses. Accurate cost schedules, condition ratings, and depreciation schedules will minimize the need for market adjustment factors. (IAAO, 1990, Property Appraisal and Assessment Administration, pages 311-312)(Emphasis applied)

Land values are not considered, because the factor is only

applied to improvements valued by the cost approach.

An ECF for a neighborhood is derived from sales; but there was no evidence or testimony from the DOR to indicate the ECF applied was developed from sales of properties of the same type, that is, properties not considered to be 100% complete. It follows, therefore, that the ECF ought to be removed.

The Board finds that the rest of the evidence presented by the DOR supported the value determined.

For the foregoing reasons, the Board finds the decision of the Flathead County Tax Appeal Board is affirmed in part and modified in part.

The value shall be calculated using the cost approach to value less 15% depreciation, 74% completion, and removal of the ECF.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. '15-2-302 MCA

2. **'15-8-111, MCA. Assessment -- market value standard -- exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption.

The Department of Revenue should, however, bear a certain

burden of providing documented evidence to support it assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967)).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County by the assessor of that county at a 1997 tax year value determined using the Department of Revenue's replacement cost new calculation less 15% depreciation and the application of a completion factor of 74%. No economic condition factor shall be applied.

Dated this 13th day of October, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.